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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2007

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN

WRIT APPEAL NO.64 OF 2007
and
M.P.NOs.1 & 2 OF 2007

1. The Inspector General of Police,
   (Technical Services),
   Police Telecommunication,
   Chennai 4.

2. The Deputy Inspector General of Police,
   (Technical Services),
   Police Telecommunication,
   Chennai 4. .. Appellants

Vs.

1. A. Malaichamy
2. K. Nedumaran
3. K. Mokkaisamy
4. S. Selvaraj
5. S. Ramasamy
6. R. Arumugam
7. M. Markendeyan
8. K. Periasamy
9. P. Davidson
10. K. Selvaraj
11. T. Dharmaraj
12. M. Muruganandham
13. T. Manickam
14. V. Gunasekaran
15. S. Govindaraj
16. S. Ravanan
17. S. Panneerselvam
18. R. Mariapan
19. D. Maharajan
20. G. Anbalagan
21. S. Muthusamy
22. B. Subbiah

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23. J. Raja Singh
24. J. Rodricks
25. G. Balaraman
26. S. Karuppiah

Respondents 13 to 26
impleaded as party respondents
vide order of court dated
30.10.2007 made in M.P.3/2007 .. Respondents

Appeal filed under Clause 15 of the Letters Patent against the order of the learned single Judge in W.P.No.6966 of 2006 dated 9.10.2006.

This original Application No.2507 of 1999 converted as writ petition No.6966 of 2006, to call for the records of the first Respondent dated 22.3.1999 made in his proceedings RC.No.A2/24/90/95-D.O.184/99 and quash the same.

For Appellants : Mr.L.S.M. Hasan Fizal
Government Advocate

For Respondent-4 : Mr.A.S. Kaizer
Respondents 13 to 26: Mr.N.G.R. Prasad for
M/s. Row & Reddy

JUDGMENT

(Judgment of the Court was delivered by P.K. MISRA, J)

Heard Mr.L.S.M. Hasan Fizal, Government Advocate, for Appellants, Mr.A.S. Kaizer for Respondent No.4 and Mr.N.G.R. Prasad for Respondents 13 to 26.

2. Even though the matter was listed for considering the question of issuance of direction, on the consent of the counsels appearing, the appeal itself has been taken up for disposal as the same question is involved while considering the appeal.

3. The present Respondent Nos.1 to 5 had filed O.A.No.2507 of 1999 before the State Administrative Tribunal wherein they had prayed for quashing the order of the Inspector General of Police and for fixing their seniority. Subsequently, the said Original Application was transferred to the High Court on abolition of the State Administrative Tribunal and renumbered as W.P.No.6966 of 2006. The contention of the present Respondents 1 to 5, who are the applicants before the Tribunal, was to the effect that those applicants along with several others were transferred to Police Radio Branch, in short PRB, by a common order dated 2.12.1978. However, while 21 persons were relieved immediately and were able to join

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PRB, other persons including the present Respondents 1 to 5 were not relieved immediately due to administrative exigencies and, therefore, they were able to join between 1980 and 1981. It was further stated that before those ten persons could join PRB., another batch of Grade II Police Constables had been transferred and had been relieved immediately and they joined before the date of joining of these applicants. It was further contended that since they were prevented from joining immediately due to administrative exigencies, their seniority should be considered at par with 21 persons, who had been transferred earlier along with these applicants and had joined earlier. It was further stated in the Original Application that cause of action for filing the Original Application arose on account of the fact that the representation, which was allowed by the Deputy Inspector General of Police on 21.10.1998, was reversed by the Inspector General by order dated 22.3.1999.

4. Before the Tribunal, a counter was filed on behalf of the Government wherein it was indicated that seniority in PRB, which was considered as a separate Unit as per G.O.Ms.No.1448, Home Department, dated 13.6.19174, is to be computed from the date of joining in such Unit. It was further indicated that in fact the persons transferred had been subsequently promoted from Grade II to Grade I and from Grade I to the rank of Head Constable and the question of seniority in the post of Grade II Constable was raised after a long gap of time. The Government had also taken a plea of non-joinder of parties.

5. Learned single Judge while considering the fact that the applicants before the Tribunal (writ petitioners) who had been transferred along with several others, could not join immediately in PRB only because of the fact that they were not relieved by the Department, directed that their seniority should be reckoned along with other persons who had been selected on the basis of the order dated 2.12.1978.

6. The Government Advocate representing the appellants, on the other hand, submitted that whatever might have been the position in 1978, seniority should be counted on the date of joining in accordance with the Rules and Regulations and moreover the persons had already been promoted from Grade II to Grade I and from Grade I to Head Constable on the basis of such seniority, which should not be disturbed after a long lapse of time. The question of non-joinder is also raised by him.

7. Several persons who were transferred after the applicants but had joined earlier have been impleaded as Respondents 13 to 26. These impleaded respondents were treated as senior to the applicants. However, neither in the Original Application nor the transferred Writ Petition they were impleaded. Such matter could not have been taken up without impleading the persons who are likely to be affected by changing seniority. These impleaded persons have raised the question of laches.

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8. Learned counsel appearing for the contesting respondents 1 to 5 has submitted that as a matter of fact the applicants were aggrieved by the order passed by the Inspector General of Police and moreover such other persons were about 116 in number and therefore it was impossible for them to implead those persons. It is further submitted that the present petitioners were making representations and therefore it cannot be said that there was any laches. It is also contended that the cause of action for filing the Original Application arose in 1999, when the Inspector General of Police reversed the order passed by the Deputy Inspector General of Police.

9. We have bestowed our anxious consideration to the contentions raised by the counsels appearing for all the parties. If the seniority of the applicants in the cadre of Grade II Constable would have been the only question, may be the order of the learned single Judge can be treated as justified, inasmuch as the applicants, even though transferred along with several others were relieved after lapse of some time for reasons not within their control. But, at the present stage, we are not only concerned merely with the question of seniority in the post of Grade II constable, but also with the question of seniority in and promotion to other higher post. It is apparent from the materials on record that in 1982 several persons were promoted from Grade II to Grade I Constable. In such common order of promotion, the present applicants were shown below several others and from such order, it is apparent that at least from the date of such order, the applicants should have been deemed to have known that the persons impleaded were treated as senior to such applicants. Their cause of action had thus arisen in the year 1982. Similarly, subsequently, there had been promotion from Grade I Constable to Head Constable, wherein again, those other persons were shown to be senior. In such a background, obviously it would be unjust to rake up the issue of seniority in the post of Grade II Constable in PRB. Therefore, we are inclined to accept the contention of the Counsels appearing for the State as well as the impleaded respondents that the writ petition was liable to be rejected on the ground of laches, as by such writ petition, the things which had become settled long before, were sought to be re-opened.

10. Apart from the aforesaid consideration, we also find that in the absence of the persons whose seniority is to be likely affected, the writ petition could not have been decided in favour of the applicants 1 to 5. It is no doubt true that the persons likely to be affected are more in number but that cannot be an excuse for impleading those persons. If numerous persons are to be impleaded, the respondents 1 to 5 should have taken recourse to prcedure similar to Order 1 Rule 8 CPC. On this ground also, the writ petition was liable to be dismissed.

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11. The aforesaid conclusions are supported to a very great extent by the decision of the Supreme Court reported in 1991 Suppl(2) SCC 183 (GOVERNMENT OF ANDHRA PRADESH AND OTHERS v. M.A. KAREEM AND OTHERS), wherein it was observed :

> "9. Besides the above infirmities there are two other important considerations which weigh heavily against the respondents. The petition before the Tribunal was filed by the respondents after a period of 13 years of their initial appointment in the Chief Office, during which period many orders consistent with the terms of service as indicated in the Memorandum Annexure 'A' must have been passed in favour of the other incumbents of the service. The courts and tribunals should be slow in disturbing the settled affairs in a service for such a long period. Besides, the respondents, in the application before the Tribunal, did not implead their colleagues who have been prejudicially affected by the impugned judgment. It cannot be assumed that the respondents had no knowledge about them. As was rightly pointed out by Mr. Sitaramiah, although in paragraph 4(d) of their application before the Tribunal (page 53 of the paper book) the respondents mentioned one Vijaya Chand alleged to be an officiating LDC who was put over the, they did not implead even him. We are, therefore, of the view that apart from the merits of the case, the petition of the respondents before the Tribunal was fit to be rejected on the ground of the abovementioned last two points."

12. For the aforesaid reasons, we are unable to uphold the decision of the learned single Judge. The writ appeal is accordingly allowed and the writ petition is rejected. No costs.

dpk

Sd/-
Asst.Registrar

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Sub Asst.Registrar

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To,

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2. The Deputy Inspector General of Police,
   (Technical Services),
   Police Telecommunication,
   Chennai 4.

+1 cc to Mr.K.S.Kaizer, Advocate Sr.No.73884.

+1 cc to M/s.Row & Reddy, Advocate Sr.No.73699.

+1 cc to The Government Pleader Sr.No.74024.

VRK(CO)
DCP/10.1 WA.NO.64/2007

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